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Attorney for Plaintiff
FLORA MARIE GIOVANNONI

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FLORA MARIE GIOVANNONI,

Plaintiff,

v.

BIDNA & KEYS, A PROFESSIONAL LAW
CORPORATION, a California corporation,
HOWARD MICHAEL BIDNA, individually
and in his official capacity, RICHARD
DAVID KEYS, individually and in his
official capacity, HARVEY MICHAEL
MOORE, individually and in his official
capacity, and ANGELA CHRISTINE
DAWSON, individually and in her official
capacity,

Defendant.

Case No. C05-01654-JF-HRL

**FIRST AMENDED COMPLAINT
DEMAND FOR JURY TRIAL**

15 United States Code § 1692 *et seq.*

Plaintiff, FLORA MARIE GIOVANNONI (hereinafter "Plaintiff"), based on information and belief and investigation of counsel, except for those allegations which pertain to the named Plaintiff or her attorneys (which are alleged on personal knowledge), hereby makes the following allegations:

I. INTRODUCTION

1. This is an action for statutory damages, attorney fees and costs brought by an individual consumer for Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

III. VENUE

IV. INTRADISTRICT ASSIGNMENT

V. PARTIES

7. Defendant, BIDNA & KEYS, A PROFESSIONAL LAW CORPORATION, (hereinafter “B&K”), is a California corporation engaged in the business of collecting debts in this state with its principal place of business located at 5120 Campus Drive, Newport Beach, Orange County, California 92660-2101. B&K may be served as follows: Bidna & Keys, Richard D. Keys, Agent for Service of Process, 5120 Campus Drive, Newport Beach, Orange County, California 92660-2101. The principal business of B&K is the collection of debts using the mails and telephone, and B&K regularly attempts to collect debts alleged to be due another. B&K is a “debt collector” within the meaning of 15 U.S.C. § 1692a(6).

1 8. Defendant, HOWARD MICHAEL BIDNA, (hereinafter "BIDNA"), is a
2 natural person and licensed attorney in the state of California. BIDNA may be served at his current
3 business address at: Howard Michael Bidna, Bidna & Keys, APLC, 5120 Campus Drive, Newport
4 Beach, Orange County, California 92660-2101 and at his residence address at: Howard Michael
5 Bidna, 51 Sunlight, Irving, Orange County, California 92612-3740. BIDNA is a "debt collector"
6 within the meaning of 15 U.S.C. § 1692a(6). Plaintiff is informed and believes, and thereon alleges
7 that BIDNA is liable for the acts of B&K because he sets and approves B&K collection policies,
8 practices, procedures and he directed the unlawful activities described herein.

9 9. Defendant, RICHARD DAVID KEYS, (hereinafter "KEYS"), is a natural
10 person and licensed attorney in the state of California. KEYS may be served at his current business
11 address at: Richard David Keys, Bidna & Keys, APLC, 5120 Campus Drive, Newport Beach,
12 Orange County, California 92660-2101 and at his residence address at: Richard David Keyes, 1551
13 La Loma Drive, Santa Ana, Orange County, California 92705-3030. KEYS is a "debt collector"
14 within the meaning of 15 U.S.C. § 1692a(6). Plaintiff is informed and believes, and thereon alleges
15 that KEYS is liable for the acts of B&K because he sets and approves B&K collection policies,
16 practices, procedures and he directed the unlawful activities described herein.

17 10. Defendant, HARVEY MICHAEL MOORE, (hereinafter "MOORE"), is a
18 natural person and licensed attorney in the state of California. MOORE may be served at his current
19 business address at: Harvey Michael Moore, Bidna & Keys, APLC, 5120 Campus Drive, Newport
20 Beach, Orange County, California 92660-2101 and at his residence address at: Harvey Michael
21 Moore, 7814 E. Broadmoor Trail, Orange, Orange County, California 92869-2411. MOORE is a
22 "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

23 11. Defendant, ANGELA CHRISTINE DAWSON, (hereinafter "DAWSON"),
24 is a natural person and licensed attorney in the state of California. DAWSON may be served at her
25 current business address at: Angela Christine Dawson, Bidna & Keys, APLC, 5120 Campus Drive,
26 Newport Beach, Orange County, California 92660-2101 and at her residence address at: Angela
27 Christine Dawson, 24741 Camden Court, Laguna Niguel, Orange County, California 92677-2192.
28 DAWSON is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

12. At all times herein mentioned, each of the Defendants was an officer, director, agent, servant, employee and/or joint venturer of his/her co-defendants, and each of them, and at all said times, each Defendant was acting in the full course and scope of said office, directorship, agency, service, employment and/or joint venture. Any reference hereafter to "Defendants" without further qualification is meant by Plaintiff to refer to each Defendant, and all of them, named above.

VI. FACTUAL ALLEGATIONS

13. On a date or dates unknown to the Plaintiff, Plaintiff incurred a financial obligation, namely a credit card account issued by Discover Bank and bearing the account number XXXX-XXXX-XXXX-1782 (hereinafter "the debt"). The debt was incurred primarily for personal, family or household purposes and is therefore a "debt" as that term is defined by 15 U.S.C. § 1692a(5).

14. Sometime thereafter on a date unknown to the Plaintiff, the debt was consigned, placed, or otherwise transferred to Defendants for collection from the Plaintiff.

15. Thereafter Defendants sent a collection letter (Exhibit "2") to Plaintiff which is a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

16. The collection letter was sent in an envelope, a true and accurate copy of which is attached hereto, marked Exhibit "1," and by this reference is incorporated herein.

17. The collection letter was sent in an envelope (Exhibit "1") on which a postage cancellation stamp dated May 7, 2004 was imprinted.

18. Plaintiff is informed and believes, and thereon alleges that Defendants deposited the envelope (Exhibit "1") containing the collection letter in the United States Mail on or about May 7, 2004.

19. Plaintiff received the envelope (Exhibit "1") containing the collection letter from Defendants on or after May 8, 2004.

20. The collection letter was sent in an envelope (Exhibit "1") which contained a window through which information printed on the collection letter could be seen by anyone who handled the collection letter.

21. A true and accurate copy of the collection letter from Defendants to Plaintiff

1 is attached hereto, marked Exhibit “2,” and by this reference is incorporated herein.

2 22. The collection letter (Exhibit “2”) is dated May 5, 2004.

3 23. The collection letter (Exhibit “2”) was the first and only communication from
4 Defendants that was received by the Plaintiff in connection with the collection of the debt owed to
5 Discover Bank.

6 24. The collection letter (Exhibit “2”) states:

7 Unless you notify me *in writing* of a dispute regarding the validity of
8 the debt, or any portion thereof, within 30 days after receiving this
letter, we will assume that the debt is valid. (emphasis added)

9 25. Plaintiff is informed and believes, and thereon alleges that her consumer
10 credit card account with Discover Bank was opened at a time when Plaintiff resided in Santa Clara
11 County, California and she signed the credit card application for her Discover Bank account in Santa
12 Clara County, California. Thereafter, the Plaintiff resided continuously in Santa Clara County,
13 California, until the present day.

14 26. Plaintiff is informed and believes, and thereon alleges that on or about July
15 27, 2004, Defendants brought a legal action in the Superior Court of the State of California, County
16 of San Joaquin - Stockton Branch, against the Plaintiff in an attempt to collect the consumer debt
17 owed to Discover Bank. The action was captioned *Discover Bank fka Greenwood Trust Company*
18 *v. Flora M Giovannoni* and was assigned case number SV-249474.

19 VII. CLAIMS

20 FAIR DEBT COLLECTION PRACTICES ACT

21 27. Plaintiff brings the first claim for relief against Defendants under the Federal
22 Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692.

23 28. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1
24 through 26 above.

25 29. Plaintiff is a “consumer” as that term is defined by the FDCPA, 15 U.S.C. §
26 1692a(3).

27 30. Defendant, B&K, is a “debt collector” as that term is defined by the FDCPA,
28 15 U.S.C. § 1692a(6).

1 31. Defendant, BIDNA, is a “debt collector” as that term is defined by the
2 FDCPA, 15 U.S.C. § 1692a(6).

3 32. Defendant, KEYS, is a “debt collector” as that term is defined by the FDCPA,
4 15 U.S.C. § 1692a(6).

5 33. Defendant, MOORE, is a “debt collector” as that term is defined by the
6 FDCPA, 15 U.S.C. § 1692a(6).

7 34. Defendant, DAWSON, is a “debt collector” as that term is defined by the
8 FDCPA, 15 U.S.C. § 1692a(6).

9 35. The financial obligation owed to Discover Bank by the Plaintiff is a “debt”
10 as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).

11 36. The collection envelope (Exhibit “1”) described above violates the FDCPA.
12 The violations include, but are not limited to, the following:

13 a. Defendants communicated with third parties in connection with the
14 collection of a debt from the Plaintiff without the Plaintiff’s prior
15 consent or the express permission of a court of competent
16 jurisdiction, in violation of 15 U.S.C. § 1692c(b);

17 b. Defendants’ display and publication of the Plaintiff’s personal
18 financial information to third parties in connection with the collection
19 of a debt from the Plaintiff is conduct the natural consequence of
20 which is to harass, oppress, or abuse the Plaintiff, in violation of 15
21 U.S.C. § 1692d;

22 c. Defendants published the Plaintiff’s personal financial information
23 to third parties, in violation of 15 U.S.C. § 1692d(3); and

24 d. Defendants’ display and publication of the Plaintiff’s personal
25 financial information to third parties in connection with the collection
26 of a debt from the Plaintiff is unfair or unconscionable, in violation
27 of 15 U.S.C. § 1692f.

28 37. The collection letter (Exhibit “2”) described above violates the FDCPA. The

violations include, but are not limited to, the following:

- a. Defendants required that disputes be in writing to prevent the Defendants from considering the debt valid, in violation of 15 U.S.C. § 1692g(a)(3).

38. Defendants have further violated the FDCPA in the following respects:

- a. Defendants brought a legal action against the Plaintiff to collect a consumer debt owed to Discover Bank in a judicial district other than the judicial district in which the Plaintiff signed the contract sued on or in the judicial district in which the Plaintiff resided at the commencement of the action, in violation of 15 U.S.C. § 1692i(a).

39. Defendants' acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

40. As a result of the Defendants' violations of the FDCPA, the Plaintiff is entitled to an award of statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C. § 1692k.

VIII. REQUEST FOR RELIEF

The Plaintiff requests that this Court:

- a. Assume jurisdiction in this proceeding;
- b. Declare that Defendants' collection envelope attached hereto as Exhibit "1" violates the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692c(b), 1692d, 1692d(3), and 1692f;
- c. Declare that Defendants' collection letter attached hereto as Exhibit "2" violates the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(a)(3);
- d. Declare that Defendants' violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692i(a);
- e. Award the Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- f. Award the Plaintiff the costs of this action and reasonable attorneys fees pursuant to

1 15 U.S.C. § 1692k(a)(3); and

2 g. Award the Plaintiff such other and further relief as may be just and proper.

3
4 CONSUMER LAW CENTER, INC.

5 By: /s/ Fred W. Schwinn
6 Fred W. Schwinn, Esq.
7 Attorney for Plaintiff
8 FLORA MARIE GIOVANNONI

9 **CERTIFICATION PURSUANT TO CIVIL L.R. 3-16**

10 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
11 named parties, there is no such interest to report.

12 /s/ Fred W. Schwinn
13 Fred W. Schwinn, Esq.

14 **DEMAND FOR JURY TRIAL**

15 PLEASE TAKE NOTICE that Plaintiff, FLORA MARIE GIOVANNONI, hereby demands
16 a trial by jury of all triable issues of fact in the above-captioned case.

17 /s/ Fred W. Schwinn
18 Fred W. Schwinn, Esq.